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AN ESSAY
ON THE LIFE
OF
MICHEL DE L'HÔPITAL,
CHANCELLOR OF FRANCE.

" The principles of religious toleration, which it was the
" constant object of the Chancellor l'Hôpital to establish, were
" the same as those expressed in the excellent preface prefixed
" by his friend, the President de Thou, to his Universal History,
" which Lord Mansfield, in his celebrated speech in the Case
" of the Chamberlain of London against Mr. Allen Evans,
" declared he never read without admiration." p. 30.

By CHARLES BUTLER, Esq.

L O N D O N :
PRINTED FOR LONGMAN, HURST, REES, ORME & BROWN,
PATERNOSTER ROW.

1814.

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Quare quis tandem me reprehendat, si quantum-cæteris, ad festos dies ludorum celebrandos, quantum ad alias voluptates, et ad ipsam requiem animi et corpores, conceditur temporis, quantum alii tempestivis conviviis, quantum aleæ, quantum pilæ, tantum mihi egomet, ad hæc studia recolenda, sumpsero.

Cic. pro Archid.

Le changement d'étude est toujours un delassement pour moi.

D'Aguesseau.

*Printed by Luke Hansard & Sons,
near Lincolns-Inn Fields, London.*

TO
THE RIGHT HONOURABLE
GEORGE CANNING,

This Essay

IS INSCRIBED,
BY HIS MOST OBLIGED AND OBEDIENT SERVANT,

CHARLES BUTLER.

Lincoln's-Inn.

By the same Author.

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VI. The Life of Bossuet, Bishop of Meaux.

C O N T E N T S.

Chap.

- I. *Some mention of the Principal Works, from which this Account of the Chancellor de l'Hôpital is taken - - - - - page 1*

- II. *A succinct View of the Revolutions of the Jurisprudence of Europe before the time of the Chancellor de l'Hôpital - - - - - 5*

- III. *Birth and early Years of l'Hôpital - - 11*

- IV. *State of the Parliament of Paris; the public and private habits of its Members in the time of l'Hôpital - - - - - 13*

- V. *L'Hôpital is successively appointed Counsellor of the Parliament of Paris, Ambassador to the Council of Trent, Maître des Requites, Superintendent of the Finances, and Chancellor of France:—First disputes between the King of France and his Parliaments:—Difference between the Office of Chancellor in France, and the Office of Chancellor in England 18*

CONTENTS.

Chap.

- VI. *The noble principles of the Chancellor de l'Hôpital on religious Freedom* - - p. 24
- VII.. *The Chancellor de l'Hôpital puts into practice his principles of religious Freedom, in his public conduct in regard to the French Huguenots.—Its salutary effects* - - 31
- VIII. *The Chancellor de l'Hôpital opposes the reception of the Council of Trent in France* - 39
- IX. *The Chancellor de l'Hôpital wishes to abolish the Venality of Law Offices in France* - 43
- X. *The Chancellor l'Hôpital wishes to abolish the Epîçes* - - - - - 51
- XI. *The Chancellor de l'Hôpital supports the Independence of the French Bar* - - - - 56
- XII. *The Chancellor de l'Hôpital was unfavourable to the extension of Law by too great a latitude in its interpretation ;—to sumptuary Laws ;—to allowing Interest on pecuniary Loans ;—favoured the Erection of Commercial Tribunals, and public Schools for the Education of Youth ;—was equally zealous for the Rights of the Crown and the Rights of the Subject, according to the true Constitution of the French Monarchy* - - - - 58

CONTENTS.

Chap.

XIII. *The Chancellor de l'Hôpital resigns the Seals:*

His last Years ; his Will ; his Death ; his

Works ; his Character by Brantôme, and the

President Hénaut - - - - - p. 64

Miscellaneous Facts respecting the Order of Avocats

in France - - - - - p. 77



APPENDIX

THESE PAPERS, WHICH WERE
GIVEN TO ME BY THE
LORDS OF THE TREASURY
ON THE 10TH OF MAY 1701
AND WERE THE PROPERTY
OF THE CROWN, ARE
NOW IN THE POSSESSION
OF THE LORDS OF THE TREASURY

L I F E
OF
MICHEL DE L'HÔPITAL,
CHANCELLOR OF FRANCE.

INTRODUCTORY CHAPTER.

*Some mention of the Principal Works from which
this Account of the Chancellor de l'Hôpital is
taken.*

PANEGYRICS and Funeral Orations fill a considerable space in the literature of France; and those, who are most disposed to contest her claim to universal pre-eminence in the Belles Lettres, acknowledge that, in those branches of eloquence, she has considerably excelled all her literary rivals. Few works of taste or genius are more admired than the Funeral Orations of Bossuet: those of Flechier are of an inferior cast; but, after its twentieth perusal, his oration on the death of Turenne will again be perused

with pleasure. The *elôges* of distinguished Academicians, by Fontenelle and d'Alembert do not aspire to eloquence ; they profess no more than to give a short view of the lives of the authors whom they celebrate, a very summary account of their principal works, and a slight mention of the events in the literary world, with which, in some manner or other, they were connected. The former are reproached for too frequent prettiness ; the latter, for a general tameness of manner ; but both of them occasionally abound in touches of great delicacy, and are so agreeably written, that we doubt whether any reader has perused a single *elôge* composed by either of those writers, without lamenting its brevity.

With these works, however, our praise of French panegyric must close. About the middle of the last century a new field was opened to it, by the prizes, which the Academy then began to hold out to those, who should produce the best panegyric of the hero (for they were never less than literary heroes), whom the Academy assigned for the theme of praise. This set all the wits of France at work : but the

event was not very favourable to their reputation. The number of works, which obtained the approbation of the public, was very small; if any of them are now read, they are the *elôges* composed by M. Thomás. The notes, with which he has accompanied them, are interesting; and, if his incessant attempts, in the text, at the sublime, generally fail, they also sometimes succeed. Thus, in his *elôge* of the emperor Marcus Aurelius, he mentions the celebrated expression of the emperor Titus.—“ I have lost a day, for, during this day, I have done good to none.”—“ What dost thou say ?” exclaims the orator.—“ The day, in which those words were pronounced was not lost; on no day wast thou so great, or so useful to the world, as when thou gavest that eternal lesson to kings.”—In this passage there is both sense and grandeur; but in the writings of its author such passages are not often found.

The magistrate, whose life is the subject of the present pages, was proposed by the French Academy in the year 1777, for the subject of an *elôge*. M. Guibert and l'Abbé

Remi contended for the prize. It was adjudged to the latter, but he had the good sense not to print his work. M. Guibert was less prudent; his performance appeared in print soon after the prize was assigned to it; but though it was evidently the production of a scholar of Voltaire, both Voltaire, and la Harpe, his echo, expressed their contempt of it. The celebrated Condorcet afterwards entered the lists, but with equal want of success. In 1807, M. Bernardi published his "Essai sur la Vie, les Ecrits, et les Loix de Michel de l'Hôpital, Chancelier de France," in one volume octavo. It is written with taste and judgment; and places the celebrated magistrate, who is the subject of it, both in an amiable and a respectable point of view; but it relates more to his private and literary life, than his public character. Of that, a very good account had been given in the "Vie du Chancelier l'Hôpital," published by an anonymous French writer, in 1764. Many interesting particulars of l'Hôpital are to be found in Brantome; and Bayle assigned to him an article in his dictionary.—From these publications, the

account of the Chancellor de l'Hôpital, which we have now the honour to submit to the reader, is principally extracted.

CHAP. II.

A succinct View of the Revolutions of the Jurisprudence of Europe before the time of the Chancellor de l'Hôpital.

ONE of the most striking differences in the constitutions of the ancient and modern governments of Europe appears in the strong, and almost impassable line of demarcation, which, in the latter, separates the officers employed in the administration of justice, not only from the military, but from all the other officers of state; and segregates, from the general body of the community, a numerous and respectable description of persons, exclusively devoted to the practice of the law, in the courts of justice. In Greece, such an order of society was little known. In the earliest days of the Roman republic, the law recognized the relation between patron and

client. To give his client legal advice, and to assist him with his knowledge and eloquence, in the courts of justice, was the duty of the *patron*. Soon after the extinction of the republic this relation began to subside; and, about the reign of Alexander Severus, the *civilians*, a new order of men, arose in the state, and like our modern lawyers, were exclusively employed in the practice of the law. They were divided into the *orators*, who pleaded the cause; the *advocates*, who attended to instruct the orators on points of law; and the *procurators*, or *cognitores*, who nearly resembled the attornies of our courts of justice. In addition to these, the *Juris-consulti* gave their opinions and advice on legal questions, and resembled the Avocats Consultants of France, and our Chamber Council. Till the time of Augustus, every person had this liberty; he confined it to some individuals, whom he selected; and made a regulation, that, in future, no one should enjoy that privilege, except under the authority of the Prince. The opinions of the *Juris-consulti*, called the *responsa prudentum*, were of great weight, and a

considerable part of the Roman law is founded on them. Doctor Taylor, in his *Elements of the Civil Law*, finds a resemblance between the *Responsa Prudentum* and our Reports; but there is this important distinction between them, that the mass of law, furnished by our reports, owes its authority to the decisions of the courts of law, of which it consists; but the *responsa prudentum*, though admitted as law, were nothing more than the private opinions of individual lawyers.

In the ruin of the Roman empire, her laws were lost in the general wreck. During the two hundred years, which followed the reign of Constantine the Great, Europe was a scene of every calamity, which the inroads of barbarians inflict, either on the countries through which they pass, or on those in which they settle. About the sixth century, Europe obtained some degree of tranquillity, in consequence of the introduction of feudalism, the most singular institution which is found in the annals of history. At first it produced a general anarchy; but the system of subordination upon which it was grounded, carried with it the germ of regular

government, and even of jurisprudence. Its effects were first visible in the various *codes of law* which the barbarous nations promulgated. Such are the Salic, the Ripuarian, the Allemannic, the Burgundian, the Visigothic and the Lombard laws. A complicated or refined system of jurisprudence is not to be looked for in them; but, if they are considered with due regard to the state of society for which they were calculated, they will be found to contain much that deserves our praise. The *capitularies*, or short legislative provisions, propounded by the sovereign, and adopted by the public assemblies of the nation, were a further advance in legislation. By degrees there was so much regularity in judicial proceedings and legal transactions of every kind, that they were regulated by established *formularies*; and, in addition to those provisions, there was, in every nation, a collection of unwritten usages or *customs*, which had the force of law. The natural tendency of these institutions to introduce regularity and peaceful habits into society, was great; but it was so much counteracted by the turbulent spirit of every class of men, that it was not

till the end of the fourteenth century, that the effect of them became generally discernible.

From that time the governments of Europe sensibly improved. A better spirit of legislation showed itself, the administration of justice became more regular, trade and husbandry were protected, several of the arts were encouraged, and a general wish for a better order of things prevailed every where. While the public mind of Europe was in this state of improvement, an event fortunately happened, which gave it a very salutary direction. About the year 1137, accident led to the discovery of a complete copy of the *Pandects of Justinian* at Amalphi, a town in Italy, near Salerno. From Amalphi it found its way to Pisa, and in 1406 it was carried to Florence, where it has since remained. Of all the Italian republics, Florence was, at that time, the most advanced in commerce, and its concomitant refinements. It contained many enlightened men; they felt the value of the *Pandects*, and made them generally known.

Few events in history can be mentioned which have conduced more to the welfare

of Europe than this discovery. The codes, the capitularies, the formularies, and the customs, by which, till that time, the feudal nations had been governed, fell very short of affording them the legal provisions which society, in the improved state of civilization; to which it was then advancing, evidently required. Unexpectedly a system of law presented itself, which seemed to contain every thing that the wisest men of those times could have desired. The wisdom and justice of the system of law expressed in the Pandects seem to have been universally felt. The study of it was immediately pursued with ardour. It was introduced into several universities; exercises were performed, lectures read, and degrees conferred in that, as in other branches of science, and most of the nations of the continent adopted it, if not as the basis, at least as an important portion, of their civil jurisprudence. A regular *succession of civil lawyers* followed. At first they rather encumbered the text with their subtleties, than illustrated it by learning and discrimination. Andrew Alciat was the first of them who united the study of polite learning with the

study of the civil laws. He was founder of a school called the Cujacian, from Cujas, the glory of civilians. Of him, it may be truly said, that he found the civil law in wood and left it in marble. Till his latter years he was pursued by envy. It is an honourable circumstance in the life of the illustrious magistrate whose life is the subject of the present work, that when Cujas was persecuted in Italy, he found under the patronage of l'Hôpital an honourable reception in France. But the mention of this circumstance makes us feel that we have wandered too long from the particular subject of the present pages.

CHAP. III.

Birth and early Years of l'Hôpital.

MICHEL DE L'HÔPITAL was born in the year 1505, at Aignepersé in Auvergne. John de l'Hôpital his father, was attached, in quality of physician, to the celebrated Connétable de Bourbon, whose defection

from his monarch, and the important consequences to which it led, are related with so much elegance by the historian of the emperor Charles the Fifth. Michel de l'Hôpital, when that event happened, was a student in the civil law, in the city of Toulouse. On his father's flight from France, he was put under arrest, but was soon liberated, and even permitted to join his father. After making some stay with him, he went to Milan, and thence to Padua, to complete his studies. When he had completed them, he went to Rome, and was appointed Auditor of the Congregation, called the Congregation of Rota. But he soon returned to France, married the daughter of John Morin, the lieutenant-criminal, and, in consequence of his marriage with her, obtained in 1537, a charge of counsellor in the Parliament of Paris.

CHAP. IV.

State of the Parliament at Paris; the public and private habits of its Members in the time of l'Hôpital.

HERE, our readers must be cautioned against confounding the constitution of the Parliament of France with that of the Parliament of England. The origin of each is traced to the great national assemblies of the tribes who conquered the Roman empire. In almost every country where the feudal institutions have been established, a national council, under the name of States-general, Cortez, Plaids, Great Assises, or Parliament, or under some other name, was introduced, and gradually became composed of three states, the Lords Spiritual, the Lords Temporal, and the Commons. Their functions were not only judicial, but, as their consent was necessary to give to the ordinances of the king the effect of law, they were also legislative. In the course of time, the Parliament of England became divided into its two houses, the Lords and Commons, and, together with the King, con-

stituted the Legislature of the nation : but its judicial power generally fell into disuse, except in causes which are brought before the House of Lords by appeal. The reverse happened in almost every country on the continent ; in them, the parliament gradually lost its legislative authority, and subsided into a High Court of Justice for the last resort, and a court of royal Revenue. It generally consisted of a fixed number of ecclesiastical peers, a fixed number of lay peers, and a fixed number of counsellors. All were equally judges, and had an equal right of giving their opinions, and an equal voice in the decree.

Such was the constitution of the French Parliament when l'Hôpital was received into it. But, at that time, it had somewhat degenerated from its ancient splendor. The close of the preceding century is described by French writers as the golden era of the French magistracy. It is every where said, that the knowledge, which the members of it possessed of the law, was at once extensive and profound ; that they were equally conversant in its theory and its practice ; that they respected their profession ; were aware

of the importance of a proper discharge of their duty, and that, while their undeviating attention and gravity assured the lowest class of subjects that justice would be fully and impartially administered to them, it intimated to persons in the highest order of life, that, in the scales of Justice, rank was of no account. At six o'clock in the morning, both in winter and in summer, they took their seats in court. At ten o'clock, the beadle entered the court, and announced the hour, and they retired to dine. After dinner, they returned to their seats; at six o'clock the business of the courts was closed; the rest of the day was devoted to their families, and literary pursuits were their only relaxation. "To feel," says the Abbé Gédoyne, in one of his entertaining memoirs, "that magistrates were, in those days, more addicted, than they are in our times, to professional and literary studies, it is sufficient to compare the state of Paris at that time with its present state. At the time we speak of, the police of Paris was very bad; the city was ill built, and had not half either of the houses or the inhabitants which it now

“ contains. The streets were ill laid out, ex-
 “ cessively dirty, never lighted, and therefore,
 “ after dusk, very unsafe. The only public
 “ spectacles were vulgar farces, after which
 “ the populace ran with avidity, but which
 “ all decent persons avoided. Their meals
 “ were very frugal; there was nothing in
 “ them to attract company; the fortunes of
 “ individuals were small, and parsimony was
 “ the only means of increasing them. A
 “ coach of any kind was hardly seen; per-
 “ sons of high rank walked on foot, in
 “ galôches, or in small boots, which, when
 “ they paid a visit of ceremony, they left in
 “ the antichamber, and resumed when they
 “ quitted it. The magistrates rode on mules
 “ when they went to the courts of justice or
 “ returned from them. It followed that,
 “ when a magistrate, after the sittings of
 “ the court, returned to his family, he had
 “ little temptation to stir again from home.
 “ His library was necessarily his sole re-
 “ source; his books, his only company.
 “ Speaking generally, he had studied hard
 “ at college; and had, acquired there a
 “ taste for literature, which never forsook
 “ him. To this austere and retired life, we

“ owe the chancellor de l’Hôpital, the Pre-
 “ sident de Thou, Pasquier, Loisel, the
 “ Pithous, and many other ornaments of
 “ the magistracy. These days are passed;
 “ and they are passed because the dissipa-
 “ tion of Paris is extreme. Is a young man
 “ of family now destined for the Law?
 “ Before he attains his 16th year, a charge
 “ is obtained for him, and he sports a
 “ chariot. With such facilities of going
 “ and coming, what a wish must there be
 “ to be in every place where pleasure calls!
 “ Consider only the time given, even by
 “ persons of decent habits of life, to music,
 “ and the opera! What a subtraction it
 “ is from that portion of time, which the
 “ magistrates of old gave to professional
 “ study and literature!”

CHAP. V.

L'Hôpital is successively appointed Counsellor of the Parliament of Paris, Ambassador to the Council of Trent, Maître des Requêtes, Superintendent of the Finances, and Chancellor of France:—First disputes between the King of France and his Parliaments:—Difference between the Office of Chancellor in France, and the Office of Chancellor in England.

IN a poetical epistle to the cardinal de Tournon, one of his protectors, l'Hôpital describes his habits in the period of his life, during which he was counsellor of the parliament of France. He rose at a very early hour, and, in the autumnal, winter, and spring sessions, was often in the court of justice before day-break, and reluctantly rose from his seat when the beadle, at 10 o'clock, announced the breaking-up of the court. He says, that he made it a rule to listen to all with patience, to interrupt no one, to express himself as concisely as possible, and to oppose unnecessary delays. He mentions, with evident satisfaction, the joy which he felt when the vacations allowed him to quit Paris, and breathe in the

country. The cares of magistracy he then banished wholly from his thoughts, and endeavoured, by harmless relaxation, to enable himself, on his return to the discharge of his functions, to resume them with fresh vigour. “ But,” says he, “ there is nothing “ frivolous in my amusements : sometimes “ Xenophon is the companion of my walks : “ sometimes the divine Plato regales me “ with the discourses of Socrates. History “ and poetry have their turns : but my “ chief delight is in the sacred writings : “ what comfort, what holy calm, does the “ meditation of them confer ! ”

After holding the office of counsellor of the parliament of Paris, during 12 years, l'Hôpital was appointed by Henry the 2d to be his ambassador at the council of Trent, which was then sitting at Bologna. By his own desire, he was soon recalled from that honourable employment, and on his return experienced, at first, some coldness from the court, but was soon restored to the royal favour, and appointed Maître des Requêtes. In the beginning of the year 1554 he was appointed superintendent of the finances: He held this employment during

six years ; and it was universally acknowledged that he displayed, in the discharge of it, great talents and inflexible integrity.

This is a remarkable era in the history of France, as it was during l'Hopital's administration of the finances that the French monarch first attempted to check that spirit of resistance to the royal will, which the parliament of Paris had for some time showed, and which at different times afterwards it exerted with so much effect, as frequently to paralyse the government, and ultimately to precipitate it into the revolution. According to the ancient forms of the French governments, the royal edicts were registered in the records of the parliament of Paris. Originally, as a matter of favour, and afterwards, as a matter of right, the parliament claimed, and were allowed, the privilege of remonstrating against them. This often interfered with the monarch's wishes, and in times, when the government was weak, conferred much power on the parliament. Henry the second experienced its effect; and to deliver himself from it was advised to divide the members of the parliament into two distinct classes,

who should sit alternately during the half of every year. The object of this measure was, to throw such of the members as were likely to prove most pliant to the royal views, into one class, and to pass all the edicts to which any resistance was apprehended, in the half year, during which that class should remain in office. This arrangement was accompanied by some salutary regulations. On that account, it was patronized by l'Hôpital, and in general favourably received by the nation; but it soon became odious, and was repealed.

At the end of six years l'Hôpital was removed from the office of superintendent of the finances; he had filled it with such disinterestedness, that when he was removed from it, his situation was so little above that of honourable poverty, that he had not the means of portioning his daughter and only surviving child. The monarch kindly stepped in to his aid, and conferred the charge of Maître des Requêtes on Robert Huralt, a member of the great council, who sought her in marriage; and he granted to l'Hôpital, but at a heavy rent, an estate at Vignay, near Estampes.

Not long after his daughter's marriage l'Hôpital was advanced to the rank of chancellor. This was in France, as it is in England, the highest dignity which a subject could attain; but in the nature of those offices, as they were finally constituted in the two kingdoms, there is a considerable distinction. In both, the chancellor is the first dignitary of the state; the guardian of his majesty's conscience, and generally has the custody of the great seal. In addition to which, the chancellor in England is, in right of the king, visitor of all hospitals and colleges of the king's foundation, is patron of all the king's livings under a certain yearly value, is general guardian of all infants and lunatics, and has the general superintendence of all the charitable foundations in the kingdom. Several of these important functions belong, in some manner, to the chancellor of France; but over all these, the chancellor of England exercises, in a judicial capacity, a vast and extensive jurisdiction in the court of chancery, partly as a court of common law, but principally as a court of equity. The chancellor of France had no such

exclusive court; but he had the universal superintendence over all that related to the administration of justice in the kingdom; a controlling power to correct any abuses which found their way into the courts of judicature; to form new regulations for their proceedings, to determine questions of jurisdiction between them, to settle differences among the members of them, to appoint the higher offices of justice, and to frame the royal ordonnances and edicts, which in anywise related to the legal polity of the kingdom, or the administration of justice. It is obvious that an office of such high dignity and extensive influence must give the distinguished personage by whom it is held, a considerable political consequence in the state.

CHAP. VI.

The noble principles of the Chancellor de l'Hôpital on religious Freedom.

THE religious troubles in France had just begun when l'Hôpital was appointed to the office of chancellor. Soon after the introduction of the doctrines of Luther into the north of Germany, the doctrines of Calvin were introduced by his followers into the south of France, and made a number of proselytes. Government was alarmed; and, by a mistaken policy, the ministers of Francis the first and Henry the second attempted to restrain the further progress of them by persecution. The usual consequences of persecution followed; the favourers of the new opinions rapidly increased; the spirit of fanaticism became general, and the whole kingdom was divided into the odious distinctions of Papist and Huguenot. The king of Navarre and the prince of Condé, were at the head of the Huguenots; the princes of Guise, an illustrious branch of the house of Lorraine, were their declared enemies.

Henry the second was succeeded by Francis the second, a weak prince, and wholly guided by his mother, the celebrated Catherine of Medicis. She threw herself into the arms of the Guises. They soon engrossed all the powers of the state; and the queen found that a defence against them was absolutely necessary. With this view she prevailed on her son to appoint l'Hôpital to the dignity of chancellor. She found the less opposition from the Guises to his appointment, as the cardinal of Lorraine had been one of the earliest patrons of l'Hôpital, and the Guises therefore naturally expected much from his gratitude; but it was not long before they found that they were not to experience from him that unbounded subserviency to their politics, which they had expected.

The earliest care of l'Hôpital after his appointment to the office of chancellor was to assemble the states-general, "The king," he said, "and his subjects, ought to be acquainted. The last princes of the house of Pharamond lived like the last Assyrian princes, in a state of invisibility, and both princes lost their kingdoms.

“ Let those who wish to engross the favour
 “ of the monarch keep him aloof from his
 “ people. I wish them to meet, and to
 “ meet often.” The states-general met at
 Orleans; and several excellent laws, formed
 afterwards into an ordonnance, were passed,
 enjoining residence to the clergy, protecting
 the people against the oppression of the
 feudal laws, and regulating the administra-
 tion of justice.

One of the favourite projects of the
 Guises was to introduce the *Inquisition* into
 France. In the accounts which have been
 published of that tribunal there probably is
 some exaggeration; but, after every reason-
 able deduction from them is made on this
 supposition, enough will remain to justify our
 considering the Inquisition as one of the
 greatest triumphs, which mistaken religion
 and sanguinary policy have ever achieved
 over humanity. Every candid Roman-
 catholic makes this confession. One of the
 best accounts which have been published of
 the Inquisition is the *Histoire des Inquisi-
 tions* by Marsollier, canon of Usés, and the
 most eminent of French biographers. After
 a dispassionate examination of the proceed-

ings of the Inquisition, he concludes, that
 “ there is nothing so different from the
 “ spirit and conduct of the church during
 “ the thousand first years of her establish-
 “ ment as the proceedings of the Inqui-
 “ sition in the countries in which it is
 “ established.” The Guises succeeded so
 far in their project of introducing it into
 France as to obtain a resolution of the
 royal council in its favour. In this stage
 of the business l’Hôpital interfered. He
 thought much good is obtained, when, by
 permitting a small mischief a great evil is
 avoided. He therefore prevailed on the
 king to publish the edict of Romorantin,
 which declared that the cognizance of here-
 tics should remain with the bishop of the
 diocese ; and directed the bishops to pro-
 ceed in the usual manner against them.
 This was too great a sacrifice to intolerance ;
 but it gave the bishops no new power, and
 completely eluded the project of the In-
 quisition. Such, however, was the general
 spirit of the nation against conferring any
 temporal power on the clergy, that it was
 found very difficult to prevail on the par-
 liament to register the edict.

In his pacific views, l'Hôpital was seconded by many persons of distinction; they formed a kind of third party, of which l'Hôpital was confessedly the head. The members of it adhered to the Roman-catholic religion, but wished its discipline altered in those instances, to which the separatists from her particularly objected; and, even on points of doctrine, recommended that decision should be delayed, as they thought the minds of men were, at that time, in too great a ferment to give a fair hearing to argument; and that decision might therefore prevent discussions of the subjects in controversy, in times, when the people would be disposed to give them a more dispassionate consideration. In the interval, they wished that the fullest toleration should be granted to every sect. "God alone," they said, "is the judge of hearts; he alone can discern that wilful obstinacy in error, which it is proper to punish in heretics, or that real attachment to truth, which it is proper to reward in the faithful. All citizens," they said, "who obey the laws, and perform their duties to their country and their neighbour, have an equal right to the advan-

“ tages which civil society confers ; those
 “ only deserve punishment who break her
 “ laws. The virtuous catholic and vir-
 “ tuous protestant equally deserve the pro-
 “ tection and rewards of law ; the wicked
 “ catholic and wicked protestant are equally
 “ deserving of legal punishment. The in-
 “ tolerance which makes us look with an
 “ evil eye on those who hold religious opi-
 “ nions, different from our own, is a principle
 “ destructive of virtue. It certainly is very
 “ desirable that no cause whatever of divi-
 “ sion should exist among the citizens of the
 “ state, and of course, that there should be
 “ no heretics. But to bring back heretics to
 “ the fold, charity, patience, and prayer,
 “ are the only arms which the Divine
 “ Founder of our religion, himself used to
 “ draw nations to him. The thunder of
 “ heaven was at his command, but he re-
 “ fused it to the prayer of the two unwise
 “ disciples who wished it hurled on the
 “ unbelieving Samaritans.” Such, we learn
 from the biographers of l’Hôpital, was his
 constant language. Such too, is the language
 of that admirable preface, prefixed by his
 friend, the president de Thou, to his

Universal History, which lord Mansfield, in his celebrated speech in the case of the chamberlain of London against Mr. Allen Evans, declared he never read without admiration. L'Hôpital acted up to his principles; from his elevation to the office of chancellor till the moment when the seals were taken from him, he laboured incessantly in the glorious cause of religious toleration. As it usually happened, he offended the zealots of each party; but he persevered: and though he met with great opposition, his efforts were not wholly without success. Through his influence, many edicts were procured which protected the lives and fortunes of protestants, and ensured to them, under certain restrictions, the free exercise of their religion. On one occasion, when it was agitated in council, whether war should be declared against the Huguenots, and l'Hôpital spoke against it with much eloquence, "It does not," the connétable de Montmorency said to him; "become you, gentlemen of the long robe, to give your opinions on matters of war." "It is true," replied l'Hôpital, "that we are ignorant of the art of war; yet we may

“ know when it is wise or prudent to declare it.” But, while l’Hôpital protected the Huguenots against oppression; he blamed their occasional indiscretions and excesses, and that republican spirit, with which, in his *Avis aux Réfugiés*, they were afterwards reproached by Bayle.

CHAP. VII.

The Chancellor de l’Hôpital puts into practice his principles of religious Freedom, in his public conduct in regard to the French Huguenots.—Its salutary effects.

A SHORT account of the *Edicts of Pacification*, as they are called by the French historians of those times, will show the address and wisdom of l’Hôpital’s counsels in favour of religious freedom, and their good effect. (*Daniel, Hist. de France*, An. 1561, 1562, 1563, *Esprit de la Ligue*, liv. I. II.) In the beginning of the year 1561 an edict was published, by his advice, by which the king directed that all persons, who had been imprisoned for their religion, should be set

free; and enjoined all the magistrates of his kingdom to restore, to the lawful proprietors, all the real and personal property of which they had been deprived in consequence of their religious principles. He exhorted all his subjects to conform to the rites and usages of the national church, and inflicted the penalty of death on all, who, under the pretence of supporting the interests of religion, should disturb the public tranquillity.

Finding this ordonnance was not a sufficient protection to the Calvinists, his majesty, in the following April, caused another ordonnance to be promulgated, by which he revived all the salutary provisions of the former edict, and forbade all his subjects to revile one another with the odious appellation of Papist and Huguenot; he forbade them to assemble in bodies, or to make domiciliary visits, under the pretence of discovering religious practices contrary to law; and he recalled to the kingdom all who had been forced to quit it in consequence of any law against the Calvinists, and who were willing to conform externally to the catholic religion. Those who would

not submit to those regulations, had liberty to sell their property, and quit the kingdom.

People were divided in their sentiments on these edicts :—To tranquillize the public mind on them, l'Hôpital prevailed on the king to refer them to the parliament of Paris. The meeting was held in July 1562, and was very solemn : the king, the queen-mother, and the principal nobility, attended it. The chancellor opened the assembly by a wise and conciliatory discourse : “ We are not met,” he said, “ to discuss points of doctrine. The only subject of our discussion is, what are the best means of preventing the dissensions, which the difference of religious opinion occasions in the state ; and to put an end to the licentiousness and rebellion of which it hath hitherto proved a continued source.” The assembly was split into three parties : the first party contended that the edicts against the protestants should be wholly suspended till a national council should be called ; the second contended that all Huguenots should be capitally punished ; and the third contended that the cognizance of heresy should be assigned to

the bishops, and that a severe punishment, but short of death, should be enacted against Huguenots who should assemble, even peaceably, for their religious worship. The second of these opinions had very few votes: the chancellor strenuously supported the first; but the third opinion was carried against him by a majority of three votes. He contended that, on such a question, so small a majority was a defeat; and that no one could say that it did not make further deliberation necessary. But the partisans of the measure declared that it was regularly carried, and pressed for its execution.

L'Hôpital, however, was steady in his views. The queen-mother, by his advice, addressed to the pope a letter, strongly pointing out the expediency of conciliatory measures; she entreated him to look with compassion on those who had the misfortune of being separated from him on religious points. "They are not," said the queen, "the anabaptists of Munster, or libertines; they believe the twelve articles of the creed. Many persons of piety think that, in condescension to their weakness, they

“should be permitted to have churches
 “without images; to omit some ceremonies
 “in the administration of the sacraments;
 “to communicate under both kinds; to cele-
 “brate the divine service in the language of
 “the country; and all this, they say, may
 “be done, without any innovation in the
 “doctrine of the church or its hierarchy,
 “and without any want of submission to the
 “sovereign pontiff.”—But the suggestions
 of the queen-mother were not attended to
 by the pope.

The chancellor's next measure was to prevail on the king to call an assembly of the notâbles. It consisted of the principal officers of state, deputies from every parliament of the kingdom, and many of the most respectable magistrates. The assembly met in January 1562. The chancellor addressed the members of it in a speech of great good sense and eloquence. He called their attention to the actual state of the Calvinists, their number and strength. He showed the injustice and impolicy of those, who wished the king to put himself at the head of one party of his subjects, and to establish peace by the destruction of

the other. " In such a war, where is the
 " king to find his soldiers? Among his
 " subjects. Against whom is he to lead
 " them? Against his subjects. A triumph
 " and a defeat is equally the destruction of
 " his subjects. I abandon to theologians,
 " controversies on religion; our business is
 " not to establish articles of faith, but to
 " regulate the state. Without being a ca-
 " tholic, a person may be a good subject.
 " I see no reason why one is not to live in
 " peace with those, who do not observe the
 " same religious ceremonies as ourselves."
 The majority of voices was in favour of to-
 leration; and the king published an edict
 in the following January, which ordered the
 Huguenots to restore to the catholics the
 churches and other property which they
 had taken from them; and, on that condi-
 tion, gave the Huguenots ample toleration,
 except that it prohibited their holding their
 assemblies within the precincts of any
 walled town. The public mind, however,
 was in too great a ferment to be immediately
 tranquillized by the provisions, however wise
 or salutary, of this edict: and, soon after
 its promulgation, an event, called by the

French historians the massacre of Vassy, (the particulars of which are foreign to the subject of these pages), took place, which threw the parties into open civil war; but, by the incessant exertion of l'Hôpital, peace was made between them; and the ground of it was, an edict of the month of March in the same year, by which almost a general liberty of holding their religious assemblies in any place they should think proper was conferred on the Calvinists; and they were declared to be good subjects to his majesty.

Such were the salutary effects of toleration, that the political adventurers among the leaders of the Calvinists could not conceal the vexation which this edict gave them. "This single stroke of a pen," they said, "is the ruin of more of our churches than armies would have destroyed in ten years."

The salutary effects of the edict were immediately observed. The insurgents returned to their duty, and catholics and protestants vied in demonstrations of loyalty to their royal master, and in zeal for his service. The English having taken the town

of Hâvre, the king and queen-mother proceeded in person to the siege. They were received with acclamations of joy. On one occasion, the chancellor remarked to them the ardour and bravery of the troops in mounting a breach :—“ Which of them,” he asked the monarch, “ are your catholic, “ which your protestant subjects ? Which “ among the troops whom you behold are “ your bravest soldiers, your best servants ? “ All are equally brave and good. This “ is the effect of the edict, so much blamed “ by some ! See how it re-unites the royal “ family ; restores to us our brothers, our “ relations and friends ; it leads us out, hand “ in hand, against our common enemy ; and “ makes him feel how respectable we are “ for virtue and power, when united among “ ourselves.”

The triumph of Hôpital was now complete : but some years after this event, the troubles of France again broke out. The history of them does not belong to these pages. After thirty-five years of civil war, with all its horrors, the edict of Nantes in 1598, restored peace to the distracted nation ; and the catholics remarked that the terms of

it were much more favourable to the Calvinists than those given to them by the edict of March 1563, for which l'Hôpital had been so greatly blamed.

CHAP. VIII.

The Chancellor de l'Hôpital opposes the reception of the Council of Trent in France.

AN important event in the public life of l'Hôpital is the opposition which he gave to the reception of the *Council of Trent* in France.—The leading distinction between protestants and catholics is, that, in matters of religion, the protestant acknowledges no law but that of the Scriptures, no interpreter, but his own conscience; the catholic acknowledges the Scriptures, and, in addition to them, a body of traditionary law, and receives both Scripture and tradition under the authority and with the interpretation of the church. It follows, that in all matters of doubt the catholics refer the question to the church; and generally, in concerns of moment, the pastors of the

church assemble to consult and decide upon them. When only the pastors of a particular territory assemble, the assembly, as the case happens, is called a *provincial*, or a *national council*; when all the pastors of Christendom are summoned to it, it is called a *general or œcumenical council*.

In an early stage of the Reformation, the expediency of assembling such a council was sensibly felt. After many delays it was assembled in 1543, at Trent, a town on the confines of Germany, but did not hold its first sitting till the beginning of the year 1546. From Trent it was transferred to Bologna, but returned to Trent; and, with several interruptions, continued its sittings in that city till its conclusion in 1564. All its doctrinal decisions have been received, without any qualification, by every catholic state of Christendom; but several states objected to some of its decisions in matters of discipline. It met no where with more resistance than in France. L'Hôpital was at the head of those, who opposed the unqualified acceptance of it. He thought, that in some matters of discipline, greater concessions should be made to protestants; that

in other points of discipline, the decrees of the council trenched on the acknowledged liberties and privileges of the church of France; and that in some there was an express, and in others an implied, admission of the right of the church to temporal power. The most strenuous and powerful advocate for its reception was the cardinal of Lorraine; and warm discussions upon it took place between him and l'Hôpital. One of the grounds on which the latter objected to its reception was that it would irritate the Huguenots, and probably produce a civil war. The cardinal appearing not to be struck with this objection, l'Hôpital pointed out to him, with great eloquence, the horrors of the late wars: "Are we," he boldly asked the purpled prelate, "to be indifferent to these scenes of carnage and blood? Are we to consider them as trifles? If all who advise measures leading to war were themselves obliged to fight in the ranks, the advocates of war would not be numerous." His opinion partially prevailed. In all doctrinal points, the authority of the council was admitted in France, universally and without any qualification; in

matters of mere ecclesiastical discipline, it bends occasionally to the discipline of the church of France; where it affects temporal power, it has no weight.

In the different atmospheres of Venice and Rome, the history of the council of Trent has been written by the celebrated Fra. Paolo, (the translation of whose work, with notes, by Dr. Courayer, is more valued than the original), and by cardinal Pallavicini. The cardinal does not dissemble that some of the deliberations of the council were attended with intrigues and passion, and that their effects were visible in various incidents of the council; but he contends that there was an unanimity in all points which related to doctrine, or the reformation of manners; and Dr. Courayer, in the preface to his translation, concedes that, "in what regarded discipline, several excellent regulations were made, according to the ancient spirit of the church;" and observes, that "though all the disorders were not reformed by the council, yet, if we set aside prejudice, we may with truth acknowledge, they are infinitely less than they were before." The classical purity

and severe simplicity of the style in which the decrees of the council are expressed are universally admired.

CHAP. IX.

The Chancellor de l'Hôpital wishes to abolish the Venality of Law Offices in France.

ONE of the objects of l'Hôpital was to establish a speedy and cheap administration of justice. With this view he laboured, but without success, to effect the repeal of the laws, which allowed the sale of offices, or, as it is technically termed, the venality of charges.—An Englishman will hear with surprize, that in France, from the age of Lewis the twelfth, to the time of the Revolution, offices of justice were both hereditary and saleable; he will hear, with greater surprize, that this was a point, on which respectable opinions were divided at the first, and continued divided to the last.

In 1467, offices which to that time had been simple commissions, revocable at the king's pleasure, were by an edict of Lewis

the eleventh rendered perpetual and hereditary. This edict gave rise both to the heirship and the sale of offices. In 1493, Charles the eighth published an edict, which, while it prohibited the sale, by one subject to another, of offices that regarded the administration of justice, was silent on the sale of other offices, and was therefore supposed to legalize their sale. An edict of Lewis the twelfth allowed the sale even of offices of justice. Till 1522, the whole of the money paid for the purchase of offices was received by the crown; but in that year an edict of Francis the first permitted the individuals, possessed of such offices, to sell them, on paying a certain proportion of the purchase-money into the royal treasury; and from that time, venality of offices became an important article of the French constitution. In the course of time, it underwent many modifications. For several centuries before the French Revolution it was conducted on the following plan.—When the king established a new court of justice, the edict of its creation fixed the number of the magistrates or judges, and the specific sums to be paid by

them for grants of the offices which they should fill. The candidates petitioned the king for them; the grants of them were made by letters under the great seal; and, from that time, the offices were hereditary in the family of the grantee. Where a court was already established, the possessor of any of the offices of which it was composed, might in his life-time, and his heirs might, after his decease, dispose of it by sale; or he might direct by will that it should be sold. When the sale of an office took place, the purchaser petitioned the crown for a grant of it; and, when the grant was signed, he paid, besides the price which the vendor was to receive for it, a sum of money into the royal treasury. The amount of that sum varied from one thousand to two thousand French crowns. The sum, which he paid into the royal treasury, was on a subsequent sale of the office returned to him or his heirs. Thus the purchaser of an office virtually paid for it no more than the accruing interest of the purchase-money from the time of its payment till the return of it on a re-sale. But great care was exerted to ascertain that the person, to whom the office

was granted, should be properly qualified for the discharge of its duties. It was always required that he should have taken the degree of licentiate both in the civil and the canon law; and the taking of such a degree, in a French university, was far from being a matter of course. As soon as the grant of the office was delivered to the purchaser, he presented it to the tribunal to which the office belonged, with a petition, stating generally his qualifications, and expressly averring that the money, which he had paid for the office, was his own money, and had not been borrowed by him for the purpose. Then a commission issued, composed of lay and ecclesiastical lawyers and other persons of condition, who were to inquire and report upon the purchaser's learning, morals and political conduct. The procureur-general of the parliament, within whose resort the office lay, presided over the commission. If the inquiry was favourable to the purchaser, they chose, out of the digest or code, some point of law, upon which, at the end of eight days, he was to come prepared with complete legal information; and he was also then expected to answer, with

general sufficiency, on the civil and canon law, and on the ordonnances and customary law of the country. Sometimes he was declared incapable of the office; sometimes a term for further probation was allowed him. Till the middle of the last century these examinations were conducted with great strictness. Sometimes the chancellor himself examined the persons appointed to offices, on their competency. "One day," says Brantôme, "I called on M. Le Chancelier de l'Hôpital, with Mareschal Strozzi, who was among his favourites, and he invited us to dine. For our dinner he gave us an excellent boullie, and nothing more; but his conversation was excellent; fine words, fine sentences in abundance, and now and then a gentle joke. After dinner, a couple of counsellors, just chosen into their offices, were announced; he ordered them in, and, without desiring them to sit down, called for the code, and questioned the two gentlemen, who were trembling all the while as a leaf, on different articles in it. Their answers did not show much knowledge; and he gave them such a lecture! Though the youngest of them

“ was fifty years old, he sent them back to
 “ their studies. Strozzi and I stood by the
 “ fire-side highly diverted with the scene,
 “ and particularly with the rueful counte-
 “ nances of the two magistrates; they had
 “ all the appearance of men going to be
 “ hanged. At length the chancellor packed
 “ them off with a frown; and assured them
 “ that he would inform the king how
 “ ignorant they were, and would see that
 “ their charges should be given to others.
 “ As soon as they were out of hearing he
 “ told us they were two great asses; and
 “ that it was against conscience that the
 “ king should name such persons for judges.
 “ We suggested to him that the game which
 “ he had offered them was too strong for
 “ their palates. Far from it, said the
 “ chancellor; I questioned them on no
 “ point, on which a tyro in the law should
 “ not be fully informed.”

It should be added, that, in general, the
 magistrates were chosen from families of
 great respectability, and of a fortune which
 placed them considerably above want. No
 one was admitted into the parliament of
 Brittany who could not prove that he was

noble by race and extraction, or in other words, who could not prove a century of nobility in his family.

The advocates for the venality of offices of justice are proud to reckon among them the cardinal de Richelieu and Montesquieu.

"The venality of charges," says the latter, (*Esprit des Loix*, l. v. c. 19.), "cannot exist in despotic states; as it is essential to despotism, that every officer should be liable to be instantaneously placed, and instantaneously displaced, at the mere will of the prince. It is proper for monarchies, as it makes the study of the law a kind of qualification, which otherwise the party would not be at the pains of acquiring for a family dignity. It gives an early direction to duty; and tends to confer permanence on an order of great public use in the state. It is a just observation of Suidas," continues Montesquieu, "that, by the sale of offices, the emperor Anastasius converted the empire into an aristocracy: Plato could not endure it. He declares that it is the same, as if persons on ship-board should choose a pilot for money. But Plato is speaking of a republic, the

“ basis of which is virtue ; we are speaking
 “ of a monarchy. There, if the sale of the
 “ offices were not allowed by law, the
 “ greediness and avarice of the courtiers
 “ would, in spite of the law, make them
 “ saleable. As the sales of them are now
 “ regulated by our laws, the chance of
 “ having them properly filled is greater than
 “ if the nomination of them depended on
 “ the mere will of the courtiers. Finally,
 “ such a method of advancing one’s self by
 “ wealth, both inspires and sustains in-
 “ dustry ; and, in a monarchy, every thing
 “ which incites noble families to industry
 “ is to be encouraged.” These observations
 are excellent ; but the intelligent reader
 will immediately perceive, that little of
 what is urged in them for the venality of
 charges in France can be applied to the
 venality of them in England. A reflection,
 highly honourable both to the wisdom and
 purity of the English constitution, will per-
 haps here suggest itself to him.

CHAP. X.

The Chancellor l'Hôpital wishes to abolish the Épiques.

ANOTHER reformation in the administration of justice, which l'Hôpital wished to effect, was the abolition of the *épiques*, or presents made, on some occasions, by the parties in a cause, to the judges by whom it was tried.

A passage in Homer, (24 Il.), where he describes a compartment in the shield of Achilles, in which two talents of gold were placed between two judges, as the reward of the best speaker, is generally cited to prove, that even in the earliest times, the judges were paid for their administration of justice: but an attentive reader will probably agree with Mr. Mitford in his construction of this passage, that the two talents were not the reward of the judge who should give the best opinion, but the subject of the dispute, and were to be adjudged to him, who established his title to them by the best arguments.—Plutarch mentions, that, under the administration of Pericles, the Athenian magistrates were first autho-

rized to require a remuneration from the suitors of their courts. In ancient Rome, the magistrates were wholly paid by the public; but Justinian allowed some magistrates of an inferior description to receive presents, which he limited to a certain amount; from the suitors before them. Montesquieu (*Esprit des Loix*, L. xxviii. ch. 35.), observes, that “in the early ages of the feudal law, when legal proceedings were short and simple, the lord defrayed the whole expense of the administration of justice in his court. In proportion as society became refined, a more complex administration of justice became necessary; and it was considered that not only the party who was cast, should, on account of his having instituted a bad cause, but that the successful party, should, on account of the benefit which he had derived from the proceedings of the court, contribute, in some degree, to the expenses attending them; and that the public, on account of the general benefit which it derived from the administration of justice, should make up the deficiency.” To secure to the judges

the proportion which the suitors were to contribute towards the expense of justice, it was provided, by an ordonnance of St. Louis, that, at the commencement of a suit, each party should deposit in court, the amount of one tenth part of the property in dispute: that the tenth deposited by the unsuccessful party should be paid over to the judges on their passing sentence; and that the tenth of the successful party should then be returned to him. This was varied by subsequent ordonnances. Insensibly it became a custom for the successful party to wait on the judges, after sentence was passed, and, as an acknowledgment of their attention to the cause, to present them with a box of sweetmeats, which were then called *épices*, or spices. By degrees, this custom became a legal perquisite of the judges; and it was converted into a present of money, and required by the judges before the cause came to hearing:—*Non deliberetur donec solventur species*, say some of the ancient registers of the parliaments of France. That practice was afterwards abolished; the amount of the *épices* was regulated; and, in many cases, the taking

of them was absolutely forbidden. Speaking generally, they were not payable till final judgment; and, if the matter were not heard in court, but referred to a judge for him to hear, and report to the court upon it, he was entitled to a proportion only of the *épices*, and the other judges were entitled to no part of them. Those among the magistrates, who were most punctual and diligent in their attendance in court, and the discharge of their duty, had most causes referred to them, and were therefore richest in *épices*; but the superior amount of them, however it might prove their superior exertions, added little to their fortune, as it did not often exceed 50*l.* and never 100*l.* a year. The judges had some other perquisites, and also some remuneration from government; but the whole of the perquisites and remuneration of any judge, except those of the presidents, amounted to little more than the *épices*. The presidents of the parliament had a higher remuneration: but the price which they paid for their offices was proportionably higher; and the whole amount, received by any judge for his *épices*, perquisites, and other remuneration,

nerations, fell short of the interest of the money which he paid for the charge; so that it is generally true, that the French judges administered justice, not only without salary, but even with some pecuniary loss. Their real remuneration was the rank and consideration which their office gave them in society, and the respect and regard of their fellow citizens. How well does this illustrate Montesquieu's aphorism, that the principle of the French monarchy was honour! It may be truly said, that the world has not produced a more learned, enlightened, or honourable order in society, than the French magistracy.

Englishmen are much scandalized when they are informed that the *French judges were personally solicited* by the suitors in court, their families and protectors, and by any other person whom the suitors thought likely to influence the decision of the cause in their favour. But it all amounted to nothing:—To all these solicitations the judges listened with equal external reverence, and internal indifference; and they availed themselves of the first moment when it could be done with decency, to bow the

parties respectfully out of the room:—it was a corvée on their time which they most bitterly lamented.

CHAP. XI.

The Chancellor de l'Hôpital supports the Independence of the French Bar.

L'HÔPITAL anxiously strove to exalt the character of the profession of the law in public estimation. In Rome, the practice of the law was at first honorary; it became afterwards an object of gain. During the second Punic war, the Cincian law was passed, to revive the primitive custom of *honorary advocacy*. But it was so often evaded, that the emperor Claudius thought it more advisable to moderate, than to attempt to destroy entirely, the salaries or emoluments of advocates. He accordingly inhibited them from taking a larger fee than two sesterces; about 80*l.* 14*s.* 7*d.* English. The advocates, however, thought it an indignity that their fees should be considered

as wages, and therefore dignified them by the honourable title of presents, or gratuities; but, as they might demand, and even recover them by action, the distinction was merely nominal. In England, fees of council always were, in the strictest sense of the word, honorary. Till the time of l'Hôpital, it was not settled whether the fees of the French advocates were honorary; but, in his time, the honorary quality of them was completely recognized. Attempts, the reason of which does not appear, were made at different times, both by the government and the parliaments of France, to oblige the advocates to sign receipts for their fees; and it was expressly enjoined by the ordonnance of Blois. In 1602, the parliament of Paris issued an arrêt, enforcing the observance of that ordonnance. It gave the advocates so much offence, that three hundred of them immediately renounced the profession with the regular formalities. This put a total stop to the proceedings of the courts of justice, and the parliament submitted. In the contest in 1775, between the order of advocates and M. Linguët, one of the charges against

him was, that he had written to the duke d'Aguillon to demand his fees, had threatened him with an action for them, and had allowed his demand on the duke to be referred to arbitration.

CHAP. XII.

The Chancellor de l'Hôpital was unfavourable to the extension of Law by too great a latitude in the interpretation of it;—to sumptuary Laws;—to allowing Interest on pecuniary Loans;—favoured the Erection of Commercial Tribunals, and public Schools for the Education of Youth;—was equally zealous for the Rights of the Crown and the Rights of the Subject, according to the true Constitution of the French Monarchy.

L'HÔPITAL was a declared enemy of the latitude of legal interpretation, in which the parliaments of France, (the reader will carry in mind, that we consider them only as courts of judicature), too frequently indulged themselves. It was of two sorts: Sometimes they signified their interpretation of law by arrêts, a species of judicial edict, having the effect of law within the

jurisdiction of the parliament by which it was issued. To this kind of semi-legislative interpretation of law, nothing in England bears any resemblance. On other occasions, the French parliaments interpreted the law, as it is generally done in courts of justice, by decisions on dubious points of law. Their interpretation of it by arrêts was frequently censured, as amounting in effect to an act of legislation; they were also reproached with carrying interpretation too far, in their decisions. In the redaction of the Code Civil Napoleon this was a subject of much discussion. It gave rise to the 5th article of the preliminary title, "on the publication and effects and application of the laws." The existence and extent of the mischief was admitted; as a remedy, some proposed an article, expressing, "that the judges should be forbidden to interpret the law by general and reglementary dispositions." To that, others objected, on the ground, that all interpretation of law was prohibited to judges; according to the maxim of the civil law; *imperatoris est interpretari legem*. To this, it was replied, that there were two sorts of interpretation,

one of legislation, the other of doctrine; that the first was prohibited to the judges, but that the second was essential to their office. The result of the discussion was, that, as the two sorts of interpretation were not easily distinguishable, it was better to omit the word interpretation from the article. It stands therefore in these words, "It is forbidden to the judge to pronounce, by way of general and reglementary disposition, on the causes which come before them :—Il est defendu au juges, de prononcer par voie du disposition generale et reglementaire, sur les causes qui leur sont soumises." If the language of this article do not convey a clearer meaning to a French, than it does to an English, lawyer, the French tribunals, when this article shall come under their consideration, will probably wish that an interpretative clause had been subjoined to it.—That the right of interpretation should be vested in judges no reasonable person can deny; but to what extent it should be allowed, or, in other words, to ascertain the exact point, where judicial interpretation should stop, and legislative interpretation be called in, is a

question of extreme difficulty. An English lawyer will perhaps admit, without any hesitation, that the decision of our courts, that after-purchased estates shall not pass by a previous devise, was an exposition of the meaning of the word "having," in the statute of wills, which the courts were allowed to make, by the strictest rules of judicial interpretation; but he will, at least doubt, whether the preservation of uses, under the application of trusts, both against the words and against the spirit of the statute of uses, was not a subject more proper for legislative than judicial provision.

It was a favourite plan of l'Hôpital that all commercial disputes should be settled by a summary process, in which process the ordinary rules of evidence might be dispensed with, and the judges should decide on a statement of the facts, brought before them by the parties themselves. With this view he procured the establishment of *consular tribunals* in the chief maritime towns of France. Justice was to be administered by them, in commercial causes, arising within their jurisdiction, by a brief and summary proceeding. They were found a useful

institution, and were, at all times greatly favoured by the government. It is a little remarkable that the Code de Commerce is, of all the Codes Napoleon, the most complex.

He wished for *sumptuary laws*; and thought the *taking of interest for money lent* should be prohibited by law. It is surprising how long the universal opinion, even of enlightened persons, was against both the expediency and moral lawfulness of receiving interest on a loan of money. Even in M. Bernardi's *éloge* of l'Hôpital, published so lately as the year 1807, it is condemned: probably M. Bernardi, when he composed it, had not read Mr. Bentham's admirable Letters on Usury.

L'Hôpital did all in his power to improve the national education of Youth. On that account, he favoured the legal establishments of the Jesuits in France, and checked the opposition of the parliament of Paris to that measure.

Such were l'Hôpital's general views respecting the administration of justice.—His loyalty to his sovereign knew no reserve. For the French constitution, an absolute

monarchy, with many checks on the monarch's abuse of his power, from general opinion, from established forms, and from intermediate authorities of great weight and influence in the state, he had the highest veneration, and used all means in his power for its preservation. On the one hand, he withheld the princes of the blood royal, and the princes of the house of Lorraine, and of other leading families, from encroaching on the just prerogatives of the crown, or forcing from the crown improvident grants ; he repressed the attempts of the governors of the provinces to exercise the powers of royalty within their governments, and checked the parliaments in their unconstitutional resistance to the crown : On the other, he favoured the frequent calling of the states, and caused many laws to be passed that were favourable to the rights and liberties of the subject. Such in particular is the article in the ordonnance of Moulins, which enjoined " the parliaments, while a cause " was pending before them, to pay no regard to any intimation upon it from the " monarch, though it were even contained " in a letter, addressed by the monarch " himself, to them."

CHAP. XIII.

The Chancellor de l'Hôpital resigns the Seals: His last Years; his Will; his Death; his Works; his Character by Brantôme, and the President Hénaut.

WE have endeavoured to present our readers with a short view of the leading principles by which l'Hôpital was guided in the discharge of his high office; it remains to mention his fall from power. We have said, that he resisted the cardinal of Lorraine on the great question of the reception of the Council of Trent in France, and that his resistance was successful. This was never forgiven by the house of Guise: the princes of it determined on the chancellor's removal; but he was so much esteemed and loved by the king, the queen-mother, and the great body of the nation, that the Guises did not venture to take the seals from him; and therefore, by their continual opposition to his measures, compelled him to resign them. He then retired to his country house at Vignay.

He had always cultivated the Muses:

several of his Poetical Epistles have reached us. Considering them as literary compositions, their unpretending simplicity is their greatest merit: but they show such real dignity of character, they breathe so pure a spirit of virtue, and are full of such excellent sentiments of public and private worth, that they will always be read with pleasure.

They are particularly remarkable for the perfect lessons to be found in them of complete religious toleration, and it adds much to their merit in this respect, that, in those days, religious toleration was a virtue very little known—"It is a folly," l'Hôpital observes in one of them (lib. vi. p. 290), "to suppose, that you can destroy by force, the divisions which subsist among us. You may put to death some of the innovators; the consequence will only be, that the land, fertilized by their blood, will produce a thousand others. You may prevent them, for a time, from assembling in their temples; but, by thus concentrating the fire, you only give it more activity, when it finds a vent: an explosion must take place, and a general conflagration, the flames of which may

“ touch the very skies, will then ensue.
 “ This kind of remedy does not suit the
 “ evils, under which we labour. Does not
 “ the founder of our religion enjoin us to
 “ love peace, to refrain from violence? Did
 “ he ever intimidate any one by acts of
 “ violence? Did he not constantly endea-
 “ vour to gain hearts to him by the meek-
 “ ness of his words? What can the sword
 “ do to the mind? it may force the tongue
 “ to be silent, or perhaps to utter untruth;
 “ but the internal sentiment will remain,
 “ and, when the danger is over, will burst
 “ forth with double force.”

He blamed both parties:—“ The Hugue-
 “ nots,” he says, “ have defiled the sanc-
 “ tuary with the blood of priests; they
 “ have violated the tombs of the dead.
 “ But have the catholics been guilty of no
 “ crime?—War, cruel war, has perverted
 “ every heart. The fear of God has dis-
 “ appeared from the world; yet every army
 “ professes to fight for his cause!”

From these scenes of blood and carnage,
 his muse often fled,—“ Health,” he ex-
 claims in another epistle, “ health to the
 “ dear friends, who, quitting the roads to

“ great towns and splendid castles, come to
 “ visit me in my humble retreat. The
 “ luxury, the amusements of the capital,
 “ they don’t expect to meet with there ; the
 “ smallness of my fields does not enable
 “ me to treat them sumptuously.—But, all
 “ I have, they may all command.” He
 proceeds to boast of “ his sheep, his lambs,
 “ his milk, his fruit, his nuts, and his wine,
 “ made under his wife’s own care ; the
 “ hares they might hunt, the birds they
 “ might shoot.” He hints to them, how-
 ever, that the situation of the domain, to
 which he invites them, was not very beauti-
 ful ; he tells them that they were not to look
 for extensive prospects, or even for a crystal
 stream ; all his water, he says, comes from a
 well.—But, “ Spartam, quam nactus sis,
 “ orna ;—Sparta has fallen to my lot, and
 “ I must make the best of her.”

His expressions on his fall from power
 are those of dignity and conscious rectitude.
 “ No ! my dear friend,” thus he writes to
 the president de Thou, “ I am not con-
 “ quered ! I have withdrawn from the ad-
 “ ministration of the public concerns ; but
 “ I did not give up my post through cow-

“ardice. As long as I could be of any use
 “to my king or country, no danger alarmed
 “me; I endured every thing. But aban-
 “doned by all, both the king and the
 “queen-mother being terrified from the
 “support of me, I retired, with a sigh for
 “my unhappy country. How contentedly
 “should I die, if I could behold my king
 “restored to his just prerogatives, and
 “peace and liberty restored to my fellow
 “subjects! My own career draws to its
 “end, my tenth lustre verges to its close.
 “The world to come should now be my
 “only care.” He speaks of his general
 conduct in life with modesty, and appeals,
 with confidence, to the judgment of it by
 posterity; yet he wishes it better known,
 what violence he had to combat, what arti-
 fices to contend with. “If those were fully
 “known, it would be wondered that I was
 “not sooner overpowered.” He rejoices
 that he had persevered to the end.

He foresaw that the peace, which pre-
 ceded the massacre on St. Bartholomew's-
 day, would not be of long duration. He
 narrowly escaped being among its victims.
 One of the few circumstances in the life

of Charles the ninth, which can be related with any praise, is the attachment which he showed to l'Hôpital. During the massacre on St. Bartholomew's-day, he sent a troop of horse to protect l'Hôpital from outrage ; and in the last illness of l'Hôpital, he and the queen-mother sent him a message of great kindness, with an assurance that they would provide for his grand-children.

L'Hôpital survived his retirement from office about four years ; and the massacre of St. Bartholomew's-day some months. That horrid event embittered all his hours : " I have lived," he says, in a letter written soon after it, " I have lived too long ! I have seen, what I could not have believed, a young prince of an excellent natural character, change, in a moment, from a mild king to a ferocious tyrant. Those were not the manners of the ancient kings : they were too fond of war ; but they made it openly. No prospect of advantage would have induced them to break a peace, which they had solemnly sworn to observe. But we have been corrupted by our neighbours ; our manners are changed."

The office of chancellor had not added to his fortune. The small provision, which he should leave behind him for his grandchildren, afflicted his last moments. He was sensible of the kind assurances which he received from the king and queen-mother ; but he foresaw, that, if they had the will, the circumstances of the times would deprive them of the means of giving them effect.

In the life of the connetable de Montmorency, Brantôme inserts the *Will of l'Hôpital* : It is very interesting.

It contains a short statement of the principal events of his life. He particularly mentions his appointment to the office of chancellor : “ I soon found,” he proceeds, “ that I had to do with persons as enterprising as they were powerful, who preferred violence to council and prudence. “ They almost displaced the queen from the “ administration of government ; and they “ forced the king of Navarre into a war. “ It was ever my opinion, that nothing is “ so destructive to a state as a civil war ; “ and that peace, almost on any terms, is “ preferable to it. The advocates for war

“ stirred up all ranks against me ;—nobility,
 “ princes, magistrates and judges ; and by
 “ their cabals prevailed over me. Thus
 “ they ruined the king and kingdom. We
 “ saw, what I cannot mention without
 “ tears, foreign soldiers sporting with our
 “ lives and property, while those, who
 “ should have been the first to defend us
 “ against them, were the first to lead them
 “ on. Finding I had no longer the means
 “ of resisting them, I retired. My last
 “ prayer to the king and queen-mother was,
 “ that, since they had resolved to break
 “ the peace, and to make war on those,
 “ with whom, but a short time before, they
 “ were concerting measures of peace, they
 “ would, when the first thirst for carnage
 “ and blood was satisfied, and before the
 “ state was brought to the last stage of
 “ ruin, embrace the earliest occasion that
 “ offered of making peace. It broke my
 “ heart to see the young king and his bro-
 “ thers taken from me, when they most
 “ stood in need of my councils. I take God
 “ and his angels to witness, that nothing
 “ has been so dear to me as my king and
 “ country. The good of religion served as

“ a pretence for my removal ; its real cause
 “ was, that those whose cabals removed
 “ me, felt, that, so long as I remained in
 “ office, I would not permit the king’s
 “ edicts to be trifled with, his finances to be
 “ dilapidated, or the fortunes of his subjects
 “ to be plundered.” He then proceeds to
 dispose of his property.

“ L’Hôpital,” says Brantôme, was the
 “ greatest, worthiest, and most learned
 “ chancellor, that was ever known in France,
 “ His large white beard, pale countenance,
 “ austere manner, made all who saw him
 “ think they beheld a true portrait of St.
 “ Jerome ; he was called St. Jerome by
 “ the courtiers. All orders of men feared
 “ him ; particularly the members of the
 “ courts of justice ; and, when he examined
 “ them on their lives, their discharge of
 “ their duties, their capacities, or their
 “ knowledge, and particularly, when he
 “ examined candidates for offices, and
 “ found them deficient, he made them
 “ feel it.”

“ He was profoundly versed in polite
 “ learning, very eloquent, and an excellent
 “ poet. His severity was never ill-natured ;

“ he made due allowance for the imperfections of human nature ; was always equal and always firm. After his death, his very enemies acknowledged that he was the greatest magistrate whom France had known, and that they did not expect to see such another.”

He died at Vignay, on the 13th of March 1573.

Both catholics and protestants reproached him with being a concealed protestant. Theodore Beza caused an engraving of him to be made, and a lantern with a lighted candle in it, fastened to his back ; designing to intimate by it, that l'Hôpital had seen the light, but turned his back to it, and left it for others to follow. His uniform declaration in favour of the toleration of the Huguenots, his marrying his daughter to a Huguenot, her subsequent conversion to Calvinism, and there not being found a single expression of regret, at any of these circumstances, in his poems, which are full of domestic details, favour this supposition. On the other hand, when the cardinal of Ferara was sent by the pope, as his ambassador to France, in 1562, one object of his mission was to procure the removal of the

chancellor on the ground of his supposed Calvinism; but, in one of his letters to cardinal Borromeo, he mentions, that, “it would be impossible to fix on l’Hôpital the imputation of heresy; as he was seen regularly at mass, at confession, and at communion.” The cardinal adds, that when he mentioned the matter to the queen-mother she would not hear of it; all these imputations, she said, were the work of a few individuals interested in his removal.” Most assuredly, his support of the Jesuits against the parliament does not favour the notion of his being a Calvinist; and it is observable, that under Henry the fourth, one of his grandsons was archbishop of Aix. Father Griffet, in a note to Father Daniel’s History of France, (tom. x. p. 626—638), refers to a letter written by l’Hôpital, in defence of the integrity of his religious principles, to Pope Pius IV, in which, after exculpating himself from the charges brought against him, he generally submits himself “to God, and the Vicar of God.” It is not likely that a concealed Huguenot would use, unnecessarily, this expression.

The works of l'Hôpital, which have reached us, consist of the ordonnances framed by him; of some discourses pronounced by him, and of his poems. For some time after his decease his poems could not be found; but at length they were discovered, and published by Pybrac, with the assistance of Scevola of St. Martha, and the president de Thou. In 1732, a better edition of them was published at Amsterdam, from a manuscript which had belonged to the celebrated pensionary, John de Witt.

“ Under the unhappy reigns, (says the president Henault, an. 1568), “ of Francis
 “ the second, Charles the ninth, and Henry
 “ the third, if the nobility and the people
 “ had been abandoned to their fanaticism,
 “ France would have fallen, if not into its
 “ former barbarity (from which its luxury
 “ and love of pleasure would for some time
 “ have preserved it), at least into anarchy.
 “ Who would not have thought that all
 “ was lost? But the chancellor de l'Hôpital
 “ watched over his country; in the midst
 “ of civil disorder, he made the laws speak
 “ and be heard. It never entered into his

“ mind to doubt their power. He did
 “ reason and justice the honour of thinking
 “ that their power was greater than the
 “ power of arms; and that, when they were
 “ properly displayed, they would have an
 “ irresistible effect on the hearts of sub-
 “ jects. Hence proceeded the laws framed
 “ by him, the noble simplicity of which
 “ rivalled that of the laws of Rome. Hence,
 “ those edicts, which by their wise provi-
 “ sions applied to future times, as well as
 “ to the actual moment, and furnished
 “ principles for the decisions of cases which
 “ were not then foreseen; those ordon-
 “ nances, the strength and wisdom of which
 “ make the weakness of the reigns, in which
 “ they were enacted, be forgotten: Im-
 “ mortal works of a great magistrate, who
 “ equally felt the extent of his duties, and
 “ the high dignity of the place which he
 “ filled! Who knew, that when the court
 “ interfered in the exercise of his functions,
 “ it was time for him to resign; and by
 “ whose conduct, all who have sat on the
 “ same tribunal, without his courage or
 “ endowments, have been tried.”

THE *Avocat* in France nearly resembled, in rank and function, the English Barrister. In the very earliest era of the history of France, her lawyers formed a distinguished portion of her community. Even in the reign of Tiberius, the city of Autun had schools of eloquence and law, which contained 60,000 students. In 297, they were under the direction of the orator Eumenius, with a salary of 600,000 sesterces, or about 2,880*l.* of our money. The schools of Toulouse, Bourdeaux, Marseilles, Lyons, Treves, and Besançon, had the same celebrity. When the Franks possessed themselves of Gaul, they respected the profession of an *Avocat*, and their most powerful nobles solicited the office of *Avoué* or *Avocat* of a religious or civil community: but, in those turbulent times, it was as much a military as a civil advocacy. The profession of *Avocat* maintained its consideration till the division of the Francic empire among the sons of Charlemagne in 814. In the troubles, which immediately followed that event, it almost vanished; but it reappeared to advantage in the reign of St. Louis. The parliament of France was made sedentary at Paris by Philip le Bel; and soon after this event the *Avocats* were formed into a distinct class, with many rights and under many obligations, by the ordinances of 1327 and 1344 of Philip de Valois; but, disdaining the more common denomination of a *body*, they assumed, in analogy to the order of the nobility, and the order of the clergy, the deno-

mination of *l'Ordre des Avocats*. Bartoli, the oracle of the law in the fourteenth century, asserted (*ad lib.* 1 *cod. de professoribus*), that, at the end of the 10th year of successful professional exertion, the *Avocat*, became *ipso facto*, a knight. A more moderate opinion assigned to him, at that period of his career, no more than a fair claim to the honour of forensic knighthood. It has not been discovered by the writer that a forensic order of knighthood was ever known in England; but in France, Italy and Germany, it was an order frequently conferred on the successful practitioner at the bar. When it was applied for, the king commissioned some ancient knight of the Forensic Order to admit the postulant into it. The postulant knelt before the knight-commissary, and said, "I pray you, my lord and my protector, to dress me with the sword, belt, golden spurs, golden collar, golden ring, and all the other ornaments of a true knight. I will not use the advantages of knighthood for profane purposes; I will use them only for the purposes of religion, for the church, and the holy Christian faith, in the *warfare of the science* to which I am devoted." The postulant then rose; and, being fully equipped, and girded with the sword, he became, for all purposes, a member of the order of knighthood, and entitled to a full participation of all the rights of military knights. In the *Memoirs of the Maréchal de Vielle-Ville*, who died in 1571, such knights are mentioned as very common, and treated by the old *Maréchal* somewhat disrespectfully, though one of his own sons-in-law was a knight of that description.—It does not appear that they wore then equestrian

costume in the courts ; but, as Beaumanoir declares it to have been a general rule, in his time, that the *Avocat*, who was followed by one horse only, should not have as large a fee as an *Avocat* who was followed by two, three, four or more horses, we must suppose they were attended to the courts by esquires.

In many of the most distinguished civil and ecclesiastical events in the French history, as the two disputes on the Salic Law, the troubles of the *Jacquerie*, the League, and the *Fronde*, and the disputes between Pope Boniface and Philip le Bel, and the recent disputes on Jansenism, the Order of *Avocats* acted an important part.

On several occasions the Order acted in direct opposition to the crown. In general, the parliament led the way in them, and the Order fought under their banners. In these contests, when matters came to an extremity, the parliament and the *Avocats* discontinued their functions. This amounted to an absolute suspension of justice, and the disputes generally terminated by the submission of the monarch.

In 1771, the parliaments, and many leading *Avocats*, were banished, and new courts of justice were established. At the end of three years the king found it necessary to recall the banished members, and restored the ancient courts.

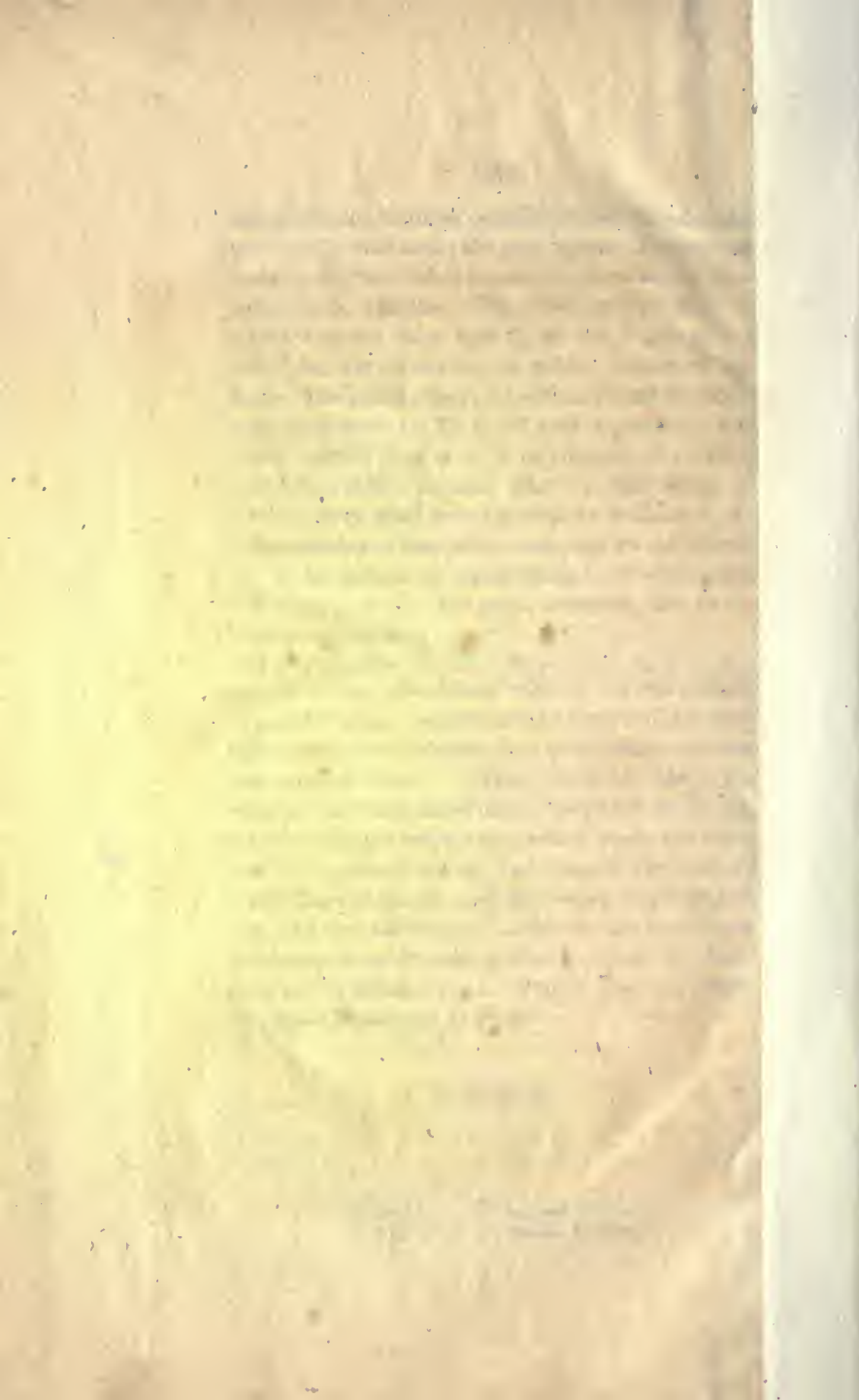
In 1790 the French National Assembly determined on an entire new organization of the administration of justice, but were not unwilling to preserve the subsisting members of the Order of *Avocats*, who, with the numerous associates, whom the new order of things must necessarily give, would prac-

tise in the courts to be established for the administration of justice under the new regime. The leading Avocats of Paris, after several meetings on the subject, rejected the plan. They foresaw that the new Avocats would have nothing of the learning, the principles, the character, or public respect of the *Order*. The public, they said, will confound the latter with the former. "To avoid such a posterity, our only means, they said, is to suppress our name, and our order, so that, after we shall cease to exist, there shall be no Avocat in France. Sole depositaries of that noble state, let us not permit it to be sullied by transmitting it to successors, unworthy of us. We pray, therefore, for its instant extinction."

The assembly was moved to tears by this discourse, and in compliance with it, on the 11th of September 1795, suppressed the Order of Avocats, their name, their costume, and every thing else that belonged to them. "Thus perished," says the writer, from whom these details have been extracted, "this celebrated corporation, which, under the name of l'Ordre des Avocats, had counted 427 years of a brilliant existence, and the renown of which had spread over all Europe."—*Histoire des Avocats au Parlement et au Bureau de Paris, depuis St. Louis jusqu'au 15 Octobre 1790. Parier Tournel, ancien Avocat au Parlement de Paris.*

THE END.





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